IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.11.2006

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.(NPD) No.1414 of 2002

Indian Institute of
Technology Madras
Chennai.600 036 .. Petitioner/Petitioner

vs.

Eternit Everest Ltd.,
Coimbatore. .. Respondent/Respondent

Revision Petition filed under Section 115 of C.P.C. against the order dated 23.7.2002, in E.A.No.875/1998 in E.P.No.1544/1997 in O.S.No.231/1988, on the file of the X Asst.City Civil Court, Madras.

For Petitioner : Ms.Narmada Sampath, for
Mr.R.Parthiban.

For Respondent : Mr.M.S.Krishnan, for
M/s.Sarvabhauman Associates.

ORDER:

This Revision Petition has been filed against the order dated 23.7.2002, in E.A.No.875/1998 in E.P.No.1544/1997 in O.S.No.231/1988, on the file of the X Asst.City Civil Court, Madras.

2. The petitioner in E.A.No.875/1998 in Execution Petition No.1544/1997 in O.S.No.231/1988 is the revision petitioner before this court.

3. E.A.No.875/1998 was filed by the petitioner under Sec.47 of the Code of Civil Procedure praying to dismiss Execution Petition No.1544/1997 as against the petitioner and the execution court by order dated 23.7.2002 dismissed E.A.No.875/1998 and aggrieved by the same the above Civil Revision Petition has been filed under Sec.115 of CPC.

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4. The case of the revision petitioner in E.A.No.875/1998 is that the petitioner was not at all a defendant in O.S.No.231/1988 and therefore the respondent herein was not entitled to file the Execution Petition against them. It is further stated by the petitioner that the defendant in O.S.No.231/1988 is Centre for Rural Development Institute of Technology, Narayanapuram, Chennai.600 302 and that Institute is a different entity and for the decree suffered by the above said institute, the petitioner institute should not be proceeded with. E.A.No.875/1998 was seriously opposed by the respondent herein who is the decree holder in O.S.No.231/1988. It is stated in their counter that the defendant institute and the petitioner institute are one and the same and in fact in the judgment in O.S.No.231/1988, the trial court has clearly held that the defendant institute is a part of the petitioner institute and therefore there is nothing wrong in filing the Execution Petition against the petitioner herein. The execution court by order dated 23.7.2002 referred to judgment of the trial court in O.S.No.231/1988 and held that as the defendant institute in O.S.No.231/1988 is a part of the petitioner institute, the execution petition could be filed against the petitioner herein.

5. Heard the learned counsel for the petitioner and the learned counsel for the respondent. I have also perused the documents filed in support of their submissions.

6. A copy of the plaint filed in the typed set of papers will clearly show that the defendant in O.S.No.231/1988 is Centre for Rural Development Institute of Technology having their office at Narayanapuram, Madras.600- 302. The name of the defendant institute in O.S.No.231/1988 was amended as per order in I.A.No.1021/1994 dated 10.8.94 and the amended plaint shows the name of the defendant as Centre for Rural Development Indian Institute of Technology having their office at Narayanapuram, Madras 600 302. The decree was also passed by the trial court against the above said institute only and not against the petitioner institute herein. Execution Petition No.1544/1997 was also filed against the Central Rural Development Department, Narayanapuram. But in column 11 relating to against whom to be executed, the respondent herein mentioned only the name of the petitioner institute and not the name of the judgment debtor institute as shown in column No.3. After notice, the petitioner herein filed E.A.No.875/1998 under Sec.47 of CPC to dismiss the Execution Petition against the petitioner's institute. The execution court dismissed E.A.No.875/1998 solely on the ground that the judgment of the trial court in O.S.No.231/1988 clearly held that the defendant institute is a part of the petitioner institute and as this finding was not challenged and became final, the petitioner institute could not re-agitate the matter by contending that they are a different entity from that of the judgment debtor.

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7. I am unable to accept the reasons given by the execution court in dismissing E.A.No.875/1998. It is an admitted position that neither the suit nor the Execution Petition was filed against the petitioner institute. The petitioner institute was not even a party in any of the proceedings nor it was impleaded in the suit. In such circumstances the petitioner is well within their rights to contend that the decree suffered by another institute could not be executed against them.

8. It is true that the trial court in its judgment has held that the defendant institute is a part of the petitioner institute. It does not mean that execution petition could straight away be filed against the petitioner institute for the decree suffered by the other institute. Even if the defendant institute is a part of the petitioner institute, the defendant institute alone should be proceeded with independently as the petitioner institute is neither a party in O.S.No.231/1988 nor a judgment debtor in Execution Petition No.1544/1997.

9. Hence I am inclined to interfere with the order of the trial court made in E.A.No.875/1998 as the petitioner could not be proceeded with Execution Petition No.1544/1997 for the decree suffered by the defendant institute in O.S.No.231/1988.

10. In the result, the Civil Revision petition is allowed. No costs.

sks

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Registrar, City Civil Court, Madra.104.
2. The Record Keeper, VR Section, High Court, Madras-104.

1 cc to Mr.R.Parthiban, Advocate, SR.55414
1 cc to M/s.Sarvabhauman Associates, SR.55191

ntk (co)

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